

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5843 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

AT SHRIMALI

Appearance:

Mr. IM Pandya AGP for Petitioners
MR BA Vaishnav for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/9/2000

ORAL JUDGEMENT

Learned AGP Mr. Pandya has appeared for the petitioner. This petition was admitted by this court on 13.12.1991 and the operation of the order passed by the tribunal which has been impugned in this petition has

been stayed with a liberty to move for expeditious hearing of the petition.

In this petition, the petitioner has challenged the order passed by the Gujarat Civil Service Tribunal in appeal No. 250 of 1989 dated 5th July, 1990. Affidavit in reply has been filed by the respondent Shri A.T.Srimali and alongwith the affidavit in reply, the respondent has produced on record voluminous record.

The facts of the present petition, in brief, are as under:

The respondent was appointed as a Junior Clerk in the office of the Assistant Directorate of Medical Services (ESIS) ["ADMS (ESIS)" for short] on 28.9.1964 and was posted at D/28, Lal Mill and the respondent resumed duty at D/28, Lal Mill and has drawn his pay from 1st October, 1964 from the dispensary and his initial appointment was made in the dispensary. The ADMS (ESIS) was the appointing authority for both, administrative staff as well as the dispensaries under his control. The case of the respondent before the tribunal was that he was appointed by the ADMS (ESIS) vide order dated 28th September, 1964 as a junior clerk where he reported for duty on 1st October, 1964 and then he was transferred to the ESI Dispensary No.28, LalMill vide order dated 3.10.1964 and that he had not applied for transfer nor had he given any option. Further, it was the case of the respondent that he has to work continuously in the dispensary run by ESIS and that he was promoted as Senior Clerk with effect from 1st March, 1969 and was posted at D/5 Baroda where he worked upto 26th January, 1982. In the seniority list published on 10th January, 1977, the first appointment as shown in the office of the ADMS (ESIS) from 1st October, 1964 and he is at Sr.No.9 in the said seniority list and in the seniority list of senior clerk dated 24th January, 1977, his name has been shown at Sr.No. 26 and the said seniority list dated 24th January, 1977 was quashed by this court in special civil application no. 1698 of 1977 by judgment dated 26/27th April, 1983 and he was promoted as Senior Assistant w.e.f. 27th January, 1982 and was posted at Rajkot where he worked upto 2.4.1984. The respondent had filed appeal no. 171 of 1984 before the Gujarat Civil Services Tribunal against the order dated 2nd April, 1984 passed by the petitioner no.2 reverting the respondent from the post of Senior Assistant to the post of Junior Clerk. In the course of hearing of the appeal, the impugned order was modified by petitioner no.2 and the respondent was ordered to be reverted to the post of senior clerk with

effect from 2.4.1984. According to the petitioner, said modification was made as per the interim order passed by this court in special civil application no. 38 of 1984 and 168 of 1984 wherein this court has directed that the petitioners therein shall not be reverted from the post in question and the judgment and order in special civil application no. 1698 of 1977 should be implemented and the clerks who acquired eligibility for promotion to the post of senior clerk prior to 17th April, 1972 should be treated as senior to the petitioners therein subject to the availability of the vacancies. The petitioners therein should not be reverted from the post of senior clerk. The respondent herein had claimed arrears of pay between 2nd April, 1984 and 6th August, 1986. In the appeal, the tribunal held that the situation at that point was fluid in view of the controversy regarding status of ESIS staff appointed on promotion under the recruitment rules and hence refused to give direction regarding arrears of pay. Thereafter, the respondent has filed review application in the said appeal being application no. 1 of 1987 which was subsequently withdrawn on 7th November, 1989 with a view to make representation to the Director of ESIS, Ahmedabad by order dated 3rd March, 1989.

Being aggrieved by the said order, the respondent approached the tribunal and challenged the said order by filing the appeal no. 250 of 1989. After hearing the parties, the tribunal held that the present respondent is entitled to all the benefits accruing to him on the basis of the seniority list dated 10.1.1977 and on the basis of the finding that the respondent must be deemed to be regularized from 3.9.1965 for the reasons stated in the judgment delivered by the tribunal. While allowing the appeal, the tribunal has also directed the petitioner no.2 to restore all the benefits to the appellant on the basis of the said seniority list and to issue consequential orders within three months of the date of receipt of the said judgment.

Said judgment delivered by the tribunal is under challenge in this petition. Learned AGP Mr. Pandya has submitted that the tribunal has committed gross jurisdictional error in allowing the said appeal and has exercised the jurisdiction not vested in it. He has also submitted that the tribunal has committed error in holding that the respondent must be deemed to be regularized from 3.9.1965 by holding contrary to the decision of the division bench of this court. He has also submitted that no service book of the respondent was maintained by the head office and the present respondent

was appointed in the office of the ADMS (ESIS) and, therefore, his service book must be there in the said office and his name must be there in the service book. However, there was no such service book of the respondent maintained by the head office and that the service book was maintained by the concerned dispensary wherein he was drawing his salary for October, 1964. He has submitted that this aspect has not at all been considered by the tribunal. He has also submitted that the tribunal has failed to note that the respondent was already working prior to 3.9.1965 as per the post sanctioned from 1st August, 1962 for 42 dispensaries and there is no question to include the respondent in the 104 junior clerks who comes in the additional staff sanctioned for the new Directorate. Even if that Government Resolution dated 3.9.1965 is taken into consideration, then also, it was clearly mentioned that those posts are specifically sanctioned for dispensary under the E.S.I. Scheme and, therefore, the tribunal has not appreciated this aspect and thereby has committed error which is apparent on the face of the record. He has also submitted that the division bench of this court has upheld the judgment and order passed by the learned single Judge of this court in special civil application no. 1698 of 1977 quashing and setting aside the seniority list prepared on 24th January, 1977 and, therefore, the tribunal has erred in ignoring this important fact which has resulted in miscarriage of justice. Mr. Pandya has also submitted that the tribunal has also erred in not considering the order passed by the apex court in SLP No. 13897 of 1983. He has also submitted that it is clearly mentioned in the order that the respondent was appointed at D/28, Lal Mill Dispensary and he has drawn the salary from the said dispensary from 1st October, 1964 to 31st October, 1964 and the respondent was not absorbed in the newly constituted directorate and it stood on a different footing and, therefore, his services were required to be regularized under the 1970 Rules and, therefore, the tribunal has committed error which is apparent on the face of the record. He has also submitted that the tribunal has also erred in not appreciating that the appeal was barred by the principles of res-judicata and nonjoinder of necessary parties. He has also submitted that the tribunal has failed to appreciate the publication of the provisional seniority list of junior clerks dated 30.6.1976, revised seniority list dated 10.1.1977 wherein the name of the respondent herein was shown at Sr.No. 9. He has submitted that in view of the orders passed by this court in special civil application no. 1522 of 1973 and 1610 of 1973, his original appointment as junior clerk was regularized by the concerned Collector and the

tribunal as not appreciated all these aspects of the matter while passing the impugned judgment and order. He has, therefore, submitted that the judgment and order passed by the tribunal is required to be quashed and set aside.

As against that, learned advocate Mr.Vaishnav has submitted that the tribunal has committed no error and that the findings of the tribunal are based on record and the conclusions drawn by the tribunal cannot be considered as perverse or contrary to record and, therefore, this court should not interfere with the same in exercise of the powers under Article 227 of the Constitution of India. He has further submitted that the tribunal has rightly decided the matter on merits and facts of the case and has rightly appreciated the decisions of this court as well as the apex court and has passed legal and valid orders which do not require any interference of this court in this petition under Article. 227 of the Constitution of India. He has relied upon the affidavit in reply filed by the respondent herein as well as the documents produced alongwith the affidavit in reply.

I have heard the learned advocates for the parties. I have also perused the judgment rendered by the tribunal and the papers produced on the record of this petition.

Before the tribunal, the respondent has challenged the order dated 3.3.1989 passed by respondent No.1 in response to his representation dated 8.12.1988 which the tribunal asked the appellant to make by order dated 7th November, 1988 in review application no. 7 of 1987. The tribunal has considered in detail the facts and circumstances of the case and has considered the following questions in the judgment :

- (1) Whether the appellant was initially appointed in the office of the ADMS, ESIS ?
- (2) Whether after/or on his appointment was posted or transferred to one of the dispensaries under the control of the said ADMS, ESIS ?
- (3) Whether irrespective of the fact that he was appointed in the office of the ADMS, ESIS or one of the dispensaries under his control, he was deemed to have been absorbed the new Directorate formed under the G.R. dated 3.9.1965?

The tribunal, after formulating the above questions, observed that there is no dispute about the fact that the appellant was appointed before 3.9.1965 and that his appointment order clearly states that he has been appointed in the office of the ADMS, ESIS namely predecessors of the New Directorate. There can also be no dispute about the fact that the Government Resolution as aforesaid ex facie regularize all appointments made by the ADMS, ESIS before 3.9.1965 and it must be presumed that all these appointees were absorbed in the newly constituted directorate, if para 2 of the said resolution is read in the context of the judgment of the High Court. The tribunal has thereafter referred to the said paragraph 2 of the judgment which reads as under:

"2. Government is also pleased to sanction for the aforesaid directorate on a temporary basis upto the 28th February 1966, in the first instance additional staff as detailed in the accompanying statement I."

The tribunal, after referring to the decision of this court as aforesaid, observed that there are few disputed questions of fact of initial appointment of the appellant and whether that initial appointment gives him a status of an incumbent of the directorate as it existed before 3.9.1965. The tribunal observed that the respondent No.1 therein has not denied the fact of appellant's being appointed in the office of ADMS ESIS in terms of the original appointment order. The tribunal was of the view that there is no dispute regarding correctness of the revised seniority list of senior clerks and it was observed by the tribunal that this Court has observed as under:

"In this seniority list, the petitioners are shown to be seniors to respondents no. 3 to 24. That would obviously be so because according to the judgment of this Court in special civil application no. 1522 of 1973 and special civil application no. 1610 of 1973, the services of the petitioners no. 1,2 and 3 stood regularised on their absorption in the new directorate with effect from 3.9.65, etc..."

The tribunal, applying the ratio of the said judgment, found that the seniority of the appellant i.e. respondent herein was beyond challenge and, therefore, the tribunal was of the opinion that the appellant

therein is entitled to all the benefits accruing to him on the basis of the said seniority list dated 10.1.1977 and on the basis of that finding, the tribunal allowed the appeal and granted the reliefs prayed for by the appellant therein.

Having perused the judgment of the tribunal and also after considering the submissions made from both the sides, I am of the view that the tribunal has given detailed reasons in support of its conclusions and has appreciated the facts which were on record before the tribunal. I am, therefore, of the view that such findings of fact cannot be interfered in a petition under Article 226 and/or 227 of the Constitution of India unless the same are proved to be perverse and/or baseless. Learned AGP Mr. Pandya appearing for the petitioner State has not been able to point out that the findings are baseless or perverse. He has also not been able to point out any infirmity in the judgment impugned before this court in this petition.

This Court is having very limited powers and jurisdiction to interfere with the findings of fact in a petition under Article 226 and / or 227 of the Constitution of India. In case of I.O.B. versus I.O.B. Staff Union reported in 2000 SCC Lab & Service 471, it has been observed by the apex court that under Article 226 and 227 of the Constitution of India, interference with the findings of fact is not permissible. It has also been observed that even the reappreciation of the evidence is also not permissible and the High Court does not have appellate powers. This Court cannot reassess the evidence while exercising the revisional jurisdiction against the order of the lower court. Therefore, considering the limited scope and ambit, according to my view, the tribunal has not committed any error apparent on the face of record and, therefore, the petition is required to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. Interim relief granted earlier is vacated.

29.9.2000. (H.K. Rathod, J.)

Vyas